

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THOMAS H. CLAY,
TDCJ-CID NO.1124123,
Plaintiff,

v.

ABBAS KOSHDEL, *et al.*,
Defendants.

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CIVIL ACTION NO. H-06-3014

OPINION ON DISMISSAL

Plaintiff, a state inmate incarcerated in the Texas Department of Criminal Justice–Correctional Institutions Division, has filed a civil rights complaint (Docket Entry No.1). Plaintiff has also filed an application to proceed *in forma pauperis* and a certified copy of his inmate trust fund account statement. (Docket Entries No.3, No.4). A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate’s privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. *Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Although plaintiff claims that he is in imminent danger, he states no facts in his pleading to support such claim.

Plaintiff’s litigation history reveals that he falls within the provisions of section 1915(g). Plaintiff has filed at least three other lawsuits in federal courts while incarcerated in prison or a detention facility. All three have been dismissed as either frivolous, malicious, or for failure to state a claim upon which relief may be granted. *See Clay v. Correctional Manage Health Care/UTMB*, Civil Action No.G-05-569 (S.D. Tex. Nov. 3, 2005).

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g).
All pending motions are further DENIED.

The Clerk will provide a copy of this Order to all parties, to the TDCJ - Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, TX 78711, Fax 512-936-2159; and to the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Manager of the Three Strikes List.

SIGNED at Houston, Texas, on this 1st day of November, 2006.


MELINDA HARMON
UNITED STATES DISTRICT JUDGE